

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,

Plaintiff,

V.

SCHLUMBERGER TECHNOLOGY
CORP. and GENERAL DYNAMICS-
ORDNANCE AND TACTICAL
SYSTEMS, INC.,

Defendants and Third-Party Plaintiffs,

V.

CRANE CO., ILLINOIS TOOL WORKS,
OLIN CORPORATION,
SHERWIN-WILLIAMS COMPANY,
MALLINCKRODT US LLC,
GREAT LAKES SYNERGY CORPORATION,
and, PENNZOIL-QUAKER STATE
COMPANY,

Third-Party Defendants.

Case No. 3:11-cv-00399 JPG/DGW

CJRA TRACK: C (Modified)

Presumptive Trial Month:
August, 2013

Judge J. Phil Gilbert

Magistrate Judge Donald G. Wilkerson

CONSENT DECREE

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”) and the Secretary of the Department of the Interior (“DOI”) filed a complaint in this matter on May 12, 2011, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607 (“CERCLA”). The Complaint seeks reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at Site 36 of the Miscellaneous Areas Operable Unit (“MISCA OU”) at the Crab Orchard National Wildlife Refuge (“Refuge”) National Priorities List Site, near Marion, Illinois (“Site 36”).

B. During World War II, the Illinois Ordnance Plant was located on a portion of the area now occupied by the Crab Orchard National Wildlife Refuge. In 1947, Congress established the Refuge, which encompasses over 40,000 acres located primarily in Williamson County, near Marion, Illinois. The enabling legislation assigned DOI, through the Fish and Wildlife Service (“FWS”), the responsibility of managing the area as a national wildlife refuge, with the additional mission of supporting private industrial activity using former Illinois Ordnance Plant facilities at the Refuge.

C. Pursuant to CERCLA Section 105, 42 U.S.C. § 9605, EPA placed the Refuge on the CERCLA National Priorities List in 1987, 52 Fed. Reg. 27,620, 27,631 (July 22, 1987). Since that time, seven operable units have been designated at the Refuge, including the MISCA OU.

D. Site 36 of the MISCA OU covers approximately 47 acres, encompassing the location of the former waste water treatment plant (“WWTP”) and associated sludge drying beds,

ponds, lagoons, and ditches. The WWTP operated from the 1940s until it was decommissioned in 2005. While the WWTP was in operation, various industrial tenants located on the Refuge discharged wastewater through the sewer system to the WWTP for treatment. At various times throughout its period of operation, the WWTP received wastes containing polychlorinated biphenyls ("PCBs"), cadmium, chromium, and other contaminants.

E. FWS performed a Remedial Investigation /Baseline Risk Assessment ("RI") of the MISCA OU between 1993 and 1995, and issued an RI report in 1996. FWS completed a Feasibility Study Report for Site 36 in December 2000. In 2002, DOI and EPA issued a Record of Decision ("ROD"), selecting excavation and removal of contaminants from the WWTP and surrounding area as the selected remedy for Site 36. The ROD identified PCBs, cadmium, and chromium, among other contaminants of concern in soils, sludge, and/or groundwater at Site 36.

F. Remedial actions at Site 36 commenced in or about 2005. With the exception of groundwater monitoring, the cleanup was completed in 2006. The cleanup was funded through DOI's Central Hazardous Materials Fund.

G. DOI has incurred \$8,758,027 in Past Response Costs at Site 36, and expects to incur \$406,174 in Future Response Costs associated with groundwater monitoring at Site 36. EPA has incurred \$625,243 in Past Response Costs at Site 36.

H. The United States alleges that General Dynamics – Ordnance and Tactical Systems, Inc. ("GD-OTS") and Schlumberger Technology Corporation ("STC") (hereinafter, "Settling Defendants") each is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is each jointly and severally liable for Site 36 response costs incurred and to be incurred.

I. On August 26, 2011, Settling Defendants each answered the Complaint and asserted counter-claims against the United States, alleging that the United States, through the Department of Interior and Department of the Army, is liable under Sections 107 and 113(f) of CERCLA, 42 U.S.C. §§ 9607, 9613, for response costs incurred or to be incurred at Site 36. Doc. 15. On June 1, 2012, Settling Defendants each amended their counter-claims to add the allegation, *inter alia*, that the United States, acting through the Federal Bureau of Prisons and the General Services Administration, is liable for response costs. Doc. 47.

J. Also on June 1, 2012, Settling Defendants filed a Third Party Complaint against, among others, Crane Co., Illinois Tool Works Inc., Olin Corporation, The Sherwin-Williams Company, Mallinckrodt US LLC, Great Lakes Synergy Corporation, Pennzoil-Quaker State Company (the "Third Party Defendants"). Doc. 48.

K. Third Party Defendant The Sherwin-Williams Company asserts that the United States agreed in Contract No. W-ORD-522 DA W-ORD-18 to indemnify The Sherwin-Williams Company as successor to Sherwin Williams Defense Corporation for damages and related costs and expenses The Sherwin-Williams Company may incur as a potentially responsible party in relation to prior activities at Site 36.

L. The Settling Defendants and Third Party Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint. The United States does not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by any of the Settling Defendants nor does the United States admit any liability arising out of any contracts with The Sherwin-Williams Company or Sherwin Williams Defense Corporation. The Third Party Defendants do not admit any liability to Settling

Defendants arising out of the transactions or occurrences alleged in the Complaint or the Third Party Complaint, or to the United States or any other person or entity in respect of conditions that presently exist or ever existed at Site 36.

M. Through this Consent Decree, the Settling Defendants agree to pay a portion of the Response Costs incurred by the United States as outlined in Paragraph 4 (the "Settlement Amount").

N. The Third Party Defendants and Settling Defendants have settled the claims between them through payments made to the Settling Defendants in a separate agreement ("Third Party Settlement") or, in the case of the Sherwin Williams Company, through a credit on the Settlement Amount (collectively, the "Third Party Settlement Amount") as explained in Paragraph 8.c., below.

O. The United States, Settling Defendants, and Third Party Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,
ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants and Third Party Defendants. Solely for the purposes of this Consent Decree and the underlying Complaint and Third Party Complaint, Settling Defendants and Third

Party Defendants waive all objections and defenses that they may have to the jurisdiction of the Court or to venue in this District. Settling Defendants and Third Party Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, upon Settling Defendants, and upon Third Party Defendants, and their predecessors, successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants and Third Party Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "Central Hazardous Materials Fund" shall mean the Fund established by Public Law 103-332 (September 30, 1994) for costs incurred by DOI and its component Offices and Bureaus in responding, pursuant to CERCLA, to the presence of hazardous substances on public lands managed by DOI.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

c. “Consent Decree” shall mean this Consent Decree. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

d. “Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. “DOI” shall mean the United States Department of the Interior and its successor departments, agencies, or instrumentalities, including but not limited to the Fish and Wildlife Service and Bureau of Reclamation.

f. “DOJ” shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

g. “Effective Date” shall mean the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

h. “EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

i. “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

j. “Federal BOP” shall mean the Federal Bureau of Prisons, an agency of the United States Department of Justice, and the Federal BOP’s successor departments, agencies or instrumentalities.

k. “Future Response Costs” shall mean all costs of response, including all direct and indirect costs, plus accrued interest on all such costs, other than Past Response Costs, that the

United States has incurred or will incur for response actions at or in connection with the Site 36 Remedial Action.

l. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

m. "Matters Addressed" shall mean Past Response Costs and Future Response Costs.

n. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

o. "Parties" shall mean the United States, Settling Defendants, and Third Party Defendants.

p. "Past Response Costs" shall mean all costs of response, including but not limited to direct and indirect costs, that the United States has incurred for response actions at or in connection with Site 36 through July 31, 2012, plus accrued Interest on all such costs through such date. Past Response Costs total \$9,383,270.

q. "Plaintiff" shall mean the United States.

r. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

s. "Response Costs" shall mean all Past Response Costs and Future Response Costs.

t. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

u. “Settlement Amount” shall mean the amount of Response Costs paid by Settling Defendants to the United States as outlined in Paragraph 4. The Settlement Amount equals \$4,167,458.

v. “Settling Defendants” shall mean General Dynamics – Ordnance and Tactical Systems (“GD-OTS”), and Schlumberger Technology Corporation (“STC”).

w. “Settling Federal Agencies” shall mean the United States Department of Interior, the United States Department of the Army, the United States Department of Justice - Federal Bureau of Prisons, and the General Services Administration, and their successor departments, agencies, or instrumentalities.

x. “Site 36” shall mean Site 36 of the Miscellaneous Areas Operable Unit of the Crab Orchard National Wildlife Refuge, encompassing approximately 47 acres, located at the Crab Orchard National Wildlife Refuge near Marion, Illinois, as generally shown on the map included in Appendix A.

y. “Site 36 Remedial Action” shall mean the remedial action at Site 36, as identified in the October 2002 Record of Decision for the Miscellaneous Areas Operable Unit at the Crab Orchard National Wildlife Refuge National Priorities List Site.

z. “Superfund” shall mean the EPA Hazardous Substances Superfund, established by the Internal Revenue Code, 26 U.S.C. § 507.

aa. “Third Party Defendants” shall mean Crane Co., Illinois Tool Works Inc., Olin Corporation, The Sherwin Williams Company, Mallinckrodt US LLC, Pennzoil-Quaker State Company, and Great Lakes Synergy Corporation.

bb. “Third Party Settlement Amount” shall mean the amount collected from or credited on behalf of the Third Party Defendants by or to the Settling Defendants. The Third Party Settlement Amount is \$1,110,000.

cc. “United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA, Settling Federal Agencies, and the Department of Defense as successor to the War Department.

V. PAYMENT OF RESPONSE COSTS

4. Payment by Settling Defendants for Past Response Costs and Future Response Costs and by Third Party Defendants to Settling Defendants. By thirty (30) business days after Settling Defendants receive notice from the United States that this Consent Decree has been lodged, Settling Defendants shall deposit \$4,167,458 into an escrow account in a duly chartered bank or trust company that is insured by the Federal Deposit Insurance Corporation (the “Escrow Account”). Five percent of the Third Party Settlement Amount is included in or credited toward the Settlement Amount, except as provided in Paragraph 8.c. Except for its payment made or credited toward the Settlement Amount in accordance with its agreement with the Settling Defendants, each Third Party Defendant shall have no further obligation to the United States except as expressly set forth herein. If the Consent Decree is not entered by the Court, and the time for any appeal of that decision has run, or if the Court’s denial of entry is upheld on appeal, the monies placed in escrow, together with accrued interest thereon, shall be returned to Settling Defendants. If the Consent Decree is entered by the Court, Settling Defendants shall, within 15 business days of receiving notice thereof, cause the monies in the Escrow Account, together with accrued interest thereon, to be paid to the United States in accordance with Paragraph 5. This

payment shall constitute the only obligation of the Third-Party Defendants to the United States under this Consent Decree.

5. Payment by Settling Defendants shall be made at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Southern District of Illinois. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System ("CDCS") number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU shall provide the payment instructions to: Mary Rose Alexander, Latham & Watkins LLP, 233 South Wacker Dr., Suite 5800, Chicago, Illinois, or by email at mary.rose.alexander@lw.com, on behalf of Settling Defendants. Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to DOJ, EPA, and DOI in accordance with Section XII (Notices and Submissions).

6. At the time of payment to the Escrow Account, Settling Defendants shall notify, in writing, EPA, DOI, and DOJ in accordance with Section XII (Notices and Submissions), and shall notify EPA and DOJ by email at acctsreceivable.cinwd@epa.gov and EESCaseManagement.ENRD@usdoj.gov, or by mail to: EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268; and EES Case Management Unit, Environment and Natural Resources Division, U.S. Department of Justice, Box 7611 Ben Franklin Station, Washington, DC 20044-7611. Such notice shall reference the CDCS Number, Site/Spill ID Number 05P2 and DOJ case number 90-11-3-643/12.

7. Of the total amount to be paid pursuant to Paragraph 4, the United States shall deposit:

- a. \$3,900,741, plus accrued interest on that amount pursuant to Paragraph 4, into the Central Hazardous Materials Fund, subject to the CJS Appropriations Act, Pub. L. 103-121, 107 Stat. 1164; and
- b. \$266,717, plus accrued interest on that amount pursuant to Paragraph 4, into the EPA Hazardous Substance Superfund.

8. Payment by Settling Federal Agencies for Past Response Costs and Future Response Costs.

- a. As soon as reasonably practicable after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall deposit in the DOI Central Hazardous Materials Fund \$5,263,460 in payment of Past Response Costs and Future Response Costs by Automated Clearing House ("ACH") Electronic Funds Transfer in accordance with instructions to be provided by DOI.
- b. As soon as reasonably practicable after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall pay to EPA \$358,526 in payment of Past and Future Response Costs. The total amount to be paid on behalf of Settling Federal Agencies pursuant to this Paragraph shall be deposited in the EPA Hazardous Substance Superfund.
- c. As soon as reasonably practicable after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall deposit in the DOI Central Hazardous Materials Fund the amount of \$158,333, which payment shall be in full satisfaction

of The Sherwin-Williams Company's purported liability to the Settling Defendants as alleged in the Third Party Complaint, shall be in full satisfaction of The Sherwin Williams Company's share of five percent of the Third Party Settlement Amount in accordance with Paragraph 4, and shall be in full satisfaction of The Sherwin Williams Company's liability for Past and Future Response Costs at Site 36. This payment shall also satisfy The Sherwin-Williams Company's claim, as successor to Sherwin-Williams Defense Corporation, to indemnity under Contract No. W-ORD-522-DA-W-ORD-18 with the War Department dated August 18, 1941, as amended (the "SWDC Contract"), for Past Response Costs and Future Response Costs at Site 36. Within 30 days following receipt of confirmation of payment by the Settling Federal Agencies, The Sherwin-Williams Company shall release the United States from The Sherwin-Williams Company's claim to indemnification under the SWDC Contract for Past Response Costs and Future Response Costs at Site 36.

- d. In the event that any payment required by Paragraphs 8.a, 8.b, or 8.c is not made within 120 days after the Effective Date, Interest on the unpaid balance shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with such Interest commencing on the 121st day after the Effective Date and accruing through the date of the payment.
- e. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement

that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

9. Interest on Late Payments. If any Settling Defendant fails to make any payment under Paragraph 4 (Payment by Settling Defendants for Past Response Costs and Future Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

10. Stipulated Penalty.

- a. If any amounts due to the United States under Paragraph 4 (Payment by Settling Defendants for Past Response Costs and Future Response Costs) are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA or DOI a stipulated penalty, in addition to the Interest required by Paragraph 9, of \$500 per violation per day that such payment is late.
- b. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by DOI and/or EPA. Of the total stipulated penalty demanded, payment of 90% of such amount shall be identified as “stipulated penalties” and shall be paid to

the DOI Central Hazardous Materials Fund by automated clearing-house known as the Department of the Treasury’s Automated Clearing House (ACH)/Remittance Express program and shall reference the following information:

Receiver name:	Central Hazardous Materials Fund ALC 14010001
Receiver Tax ID Number:	53-0196949

Receiver address: 7401 West Mansfield Ave.
Mailstop D-2777
Lakewood, CO 80235

Receiver bank: Federal Reserve Bank
New York, NY
ABA # 051036706

Receiver ACH Account No.: 312024

Of the total stipulated penalty demanded, payment of 10% of such amount shall be as “stipulated penalties” and shall be made to EPA by Fedwire Electronic Funds Transfer (“EFT”) in accordance with the information below:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045

Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”

and shall reference the CDCS Number, Site/Spill ID Number 05P2 , and DOJ Case Number 90-11-3-643/12.

11. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to the United States by virtue of Settling Defendants’ failure to comply with the requirements of this Consent Decree.

13. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the failure of any one Settling Defendant to make the payments required under this Consent Decree, the remaining Settling Defendant shall be responsible for such payments.

14. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Paragraph 4 or from performance of any other requirements of this Consent Decree.

VII. COVENANTS BY PLAINTIFF

15. Covenants for Settling Defendants and Third Party Defendants by United States. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants and Third Party Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) to recover Past Response Costs or Future Response Costs. These covenants shall take effect upon receipt by EPA and DOI of the payments required by Paragraph 4 (Payment by Settling Defendants for Past Response Costs and Future Response Costs) and any Interest or stipulated penalties due thereon under Paragraph 9 (Interest on Late Payments) or 10 (Stipulated Penalty). These covenants are conditioned upon the satisfactory performance by Settling Defendants of their payment obligations under this Consent Decree. These covenants extend only to Settling Defendants and Third Party Defendants and do not extend to any other person.

16. Covenant for Settling Federal Agencies. In consideration of the payment that will be made by the United States on behalf of Settling Federal Agencies under this Consent Decree, EPA and DOI each covenant not to take administrative action against Settling Federal Agencies pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs or Future Response Costs. DOI's and EPA's covenant shall take effect upon the receipt by DOI and EPA of the payment required by Paragraph 8.b (Payment by Settling Federal Agencies) and any Interest due thereon under Paragraph 8.d. DOI's and EPA's covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. DOI's and EPA's covenant extends only to Settling Federal Agencies and does not extend to any other person.

VIII. RESERVATION OF RIGHTS BY UNITED STATES

17. Reservations. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants, and EPA and DOI reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies, with respect to all matters not expressly included within the Covenants by the United States in Paragraphs 15 and 16. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants, and EPA and DOI reserve all rights against Settling Federal Agencies, with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs or Future Response Costs;

- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606, for response actions that are not within the definition of the Site 36 Remedial Action;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

The United States reserves, and this Consent Decree is without prejudice to, all rights against the Third Party Defendants, with respect to:

- a. criminal liability; and
- b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

18. United States' Reservations Relating to Unknown Conditions and New Information.

- a. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel either or both Settling Defendants, and DOI and EPA each reserve the right to issue an administrative order seeking to compel Settling Federal Agencies, to perform further response actions relating to the Site 36 Remedial Action and/or to pay the United States for additional costs of response relating to the Site 36 Remedial Action if conditions at Site 36, previously unknown to DOI or EPA, are discovered, or information, previously unknown to EPA or DOI, is

received, in whole or in part, and DOI or EPA determine that these previously unknown conditions or this information together with other relevant information indicate that the Site 36 Remedial Action is not protective of human health or the environment. The Settling Defendants are barred from asserting claims against any of the Third Party Defendants in respect of any proceeding or action instituted against either or both of them by the United States under the terms of the Paragraph, whether for contribution or on any other ground or theory.

- b. For purposes of Paragraph 18.a., the information and the conditions known to DOI or EPA shall include only that information and those conditions known to DOI or EPA as of the date of the Date of Lodging of the Consent Decree.

IX. COVENANTS BY SETTLING DEFENDANTS AND THIRD PARTY DEFENDANTS

19. Covenants by Settling Defendants and Third Party Defendants. Settling Defendants and Third Party Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, its employees, or its contractors who performed or will perform work in connection with the Site 36 Remedial Action with respect to Past Response Costs or Future Response Costs, any costs incurred by Settling Defendants and Third Party Defendants in association with Site 36 and this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund or the Central Hazardous Materials Fund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law, except to the extent related to unknown

conditions or new information claimed by the United States pursuant to Paragraph 18;

- b. any claim arising out of the response actions at Site 36 for which the Past Response Costs were incurred, or which Future Response Costs will be incurred, including any claim under the United States Constitution, the Constitution of the State of Illinois, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law, related to Site 36, except to the extent related to unknown conditions or new information claimed by the United States pursuant to Paragraph 18.
- d. any claim for indemnification by The Sherwin-Williams Company, as successor to Sherwin Williams Defense Corp., for Past Response Costs or Future Responses Costs at Site 36, pursuant to any contract including but not limited to the SWDC Contract, or any statute, regulation, or any other basis or theory, except to the extent related to any claims reserved by the United States pursuant to Section VIII of this Consent Decree (Reservation of Rights by the United States).
- e. The covenants by Settling Defendants and Third Party Defendants do not include any claim for contribution or indemnification from the United States for damages for injury to, destruction of, or loss of resources, or the costs of any natural resources assessments at Site 36.

As of the Effective Date, each of the Settling Defendants and Third-Party Defendants hereby release, covenant not to sue and agree not to assert any direct or indirect claims against each other or against each other's owners, officers, directors, employees, or agents with respect to Matters Addressed in this Consent Decree for Site 36, except as necessary to enforce the terms of any agreement by or between them relating to Matters Addressed in this Consent Decree.

20. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

21. Covenant by Settling Federal Agencies. Settling Federal Agencies agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund or Central Hazardous Materials Fund through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to Past Response Costs, Future Response Costs, and this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

X. EFFECT OF SETTLEMENT/CONTRIBUTION

22. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to Site 36 against

any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. 9613 § (f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

23. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that each Settling Defendant and Third Party Defendant, and each Settling Federal Agency is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for Matters Addressed in this Consent Decree.

24. Each Settling Defendant and Third Party Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree after the Effective Date, notify EPA, DOI, and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree after the Effective Date, notify EPA, DOI, and DOJ in writing within 10 days after service of the complaint or claim upon it. In addition, each Settling Defendant and Third Party Defendant shall notify EPA, DOI and DOJ within 10 days after service or receipt of any Motion for Summary Judgment, and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

25. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to Site 36, no Settling

Defendant or Third Party Defendant shall assert nor maintain any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by Plaintiff set forth in Section VII. Further, nothing in this Paragraph affects any potential claim for contribution from Settling Federal Agencies for damages for injury to, destruction of, or loss of resources, or the costs of any natural resources assessments.

XI. RETENTION OF RECORDS

26. Until three years after the entry of this Consent Decree, each Settling Defendant and Third Party Defendant shall preserve and retain all non-identical copies of records, reports, or information (hereinafter referred to as "Records") (including records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to response actions taken at Site 36 or the liability of any person under CERCLA with respect to Site 36, regardless of any corporate retention policy to the contrary.

27. After the conclusion of the three-year document retention period in the preceding Paragraph, Settling Defendants and Third Party Defendants shall notify EPA, DOI and DOJ at least 90 days prior to the destruction of any such Records, and, upon request by EPA, DOI or DOJ, Settling Defendants and Third Party Defendants shall deliver any such Records to EPA and DOI. Settling Defendants and Third Party Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants or Third Party Defendants assert such a privilege, they shall provide EPA and DOI

with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the Record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to DOI and EPA in redacted form to mask the privileged information only. Settling Defendants and Third Party Defendants shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' or Third Party Defendants' favor. However, no Records created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged or confidential.

28. Each Settling Defendant and Third Party Defendant certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information (other than identical copies) relating to its potential liability regarding Site 36 since the earlier of notification of potential liability by the United States or the State or the filing of suit against it regarding Site 36 and that it has fully complied with any and all EPA and DOI requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

29. The United States acknowledges that each Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA and DOI requests for information pursuant to Sections

104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. NOTICES AND SUBMISSIONS

30. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to EPA, DOI, DOJ, Settling Defendants, and Third Party Defendants, respectively.

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-643/12

Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
Re: DJ # # 90-11-6-19228

As to DOI:

Chief, Environmental Compliance and Enforcement Branch
Office of the Solicitor
Department of the Interior,
1849 C Street, NW
Washington, DC 20240

Fund Manager, Central Hazardous Materials Fund
Office of Environmental Policy and Compliance
Department of the Interior

1849 C Street, NW
Washington, DC 20240

As to EPA:

Nanjunda Gowda
Remedial Project Manager
U.S. Environmental Protection Agency
Mail Code SR-6J
77 W. Jackson Blvd.
Chicago, IL 60604

Mary L. Fulghum
Associate Regional Counsel
U.S. Environmental Protection Agency
Mail Code C-14J
77 W. Jackson Blvd.
Chicago, IL 60604

As to Setting Defendants:

Alex Juden
General Counsel
Schlumberger Limited
5599 San Felipe, 17th Floor
Houston, Texas 77056

Elaine Black Mills
Associate General Counsel
General Dynamics Corporation
Ordnance and Tactical Systems
11399 16th Court North, Suite 200
St. Petersburg, FL 33716

As to Third Party Defendants:

Paul K. Stockman, Esq.
McGuire Woods LLP
EQT Plaza
625 Liberty Avenue, 23rd Floor
Pittsburgh, PA 15222-3142
Counsel for Crane Co.

Crane Co.
Attn: General Counsel
100 First Stamford Place
Stamford, CT 06902-6784

Robin R. Lunn, Esq.
Neal Gerber & Eisenberg LLP
Two North LaSalle Street, Suite 1700
Chicago, IL 60602-3801
Counsel for Illinois Tool Works Inc.

Philip S. Dallosto
Deputy General Counsel & Assistance Secretary
Illinois Tool Works Inc.
3600 West Lake Avenue
Glenview, IL 60026

Stuart N. Roth, Esq.
166 Clay Hill Rd.
Stamford, CT 06905
Counsel for Olin Corporation

Ralph E. Cascarilla, Esq.
Walter Haverfield LLP
1301 E. Ninth Street, Suite 3500
Cleveland, OH 44114-1821
Counsel for The Sherwin-Williams Company

Joseph M. Kellmeyer, Esq.
Thompson Coburn LLP
One US Bank Plaza
St. Louis, MO 63101-1693
Counsel for Mallinckrodt US LLC

Eric Berry
Vice President – Environmental Law
Mallinckrodt LLC, a Covidien company
675 McDonnell Blvd.
St. Louis, MO 63042

R. Delacy Peters, Jr., Esq.
Gonzalez Saggio and Harlan LLC
Two Prudential Plaza
180 N. Stetson Avenue, Suite 4425
Chicago, IL 60601
Counsel for Pennzoil-Quaker State Company

Nancy Dehmlow
Vice President/Secretary
Great Lakes Synergy Corp.
85 West Algonquin Road, Suite 600
Arlington Heights, IL 60005-3208

Frederick S. Mueller
Johnson & Bell, Ltd
33 West Monroe Street
Suite 2700
Chicago, Illinois 60603
Counsel for Great Lakes Synergy Corp.

XIII. RETENTION OF JURISDICTION

31. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIV. INTEGRATION/APPENDIX

32. This Consent Decree and its appendix constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree: "Appendix A", which is the map of Site 36.

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

33. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants and Third Party Defendants consent to the entry of this Consent Decree without further notice.

34. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVI. SIGNATORIES/SERVICE

35. Each undersigned representative of a Settling Defendant and Third Party Defendant to this Consent Decree and the Assistant Attorney General/Deputy Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

36. Each Settling Defendant and Third Party Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

37. Each Settling Defendant and Third Party Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants and Third Party Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court.

XVII. FINAL JUDGMENT

38. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the Settling Defendants, and

Third Party Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.


SO ORDERED THIS ____ DAY OF _____, 2013.

United States District Judge

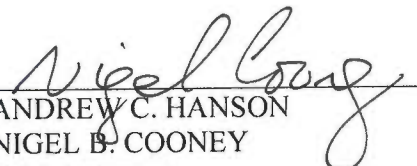
Signature Page for Consent Decree Regarding the *Crab Orchard Site 36 Superfund Site* and
United States v. Schlumberger Technology Corp. et al, 3:11-cv-00399 (S.D. Ill.)

FOR PLAINTIFF UNITED STATES OF AMERICA:

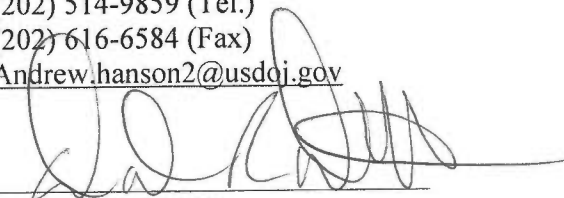
DATE: 12/23/13


ROBERT G. DREHER
Acting Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice

DATE: 1/6/14


ANDREW C. HANSON
NIGEL B. COONEY
Trial Attorneys
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-9859 (Tel.)
(202) 616-6584 (Fax)
Andrew.hanson2@usdoj.gov

DATE: 12/31/13


DANIEL DERTKE
Senior Attorney
Environmental Defense Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-0994 (Tel.)
(202) 514-8865 (Fax)
Daniel.dertke@usdoj.gov

Signature Page for Consent Decree Regarding the *Crab Orchard Site 36 Superfund Site* and
United States v. Schlumberger Technology Corp. et al, 3:11-cv-00399 (S.D. Ill.)

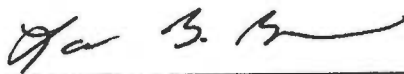
THOMAS R. WIGGINTON
United States Attorney
Southern District of Illinois

J. CHRISTOPHER MOORE
Assistant United States Attorney
Nine Executive Drive
Fairview Heights, Illinois 62208-1344
(618) 628-3700 (Tel.)
(618) 628-3730 (Fax)
Chris.Moore@usdoj.gov

Signature Page for Consent Decree Regarding the *Crab Orchard Site 36 Superfund Site and United States v. Schlumberger Technology Corp. et al*, 3:11-cv-00399 (S.D. Ill.)

DEPARTMENT OF THE INTERIOR:

DATE: _____



LAURA B. BROWN
Associate Solicitor
Division of Land and Waster Resources
Office of the Solicitor
United States Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Signature Page for Consent Decree Regarding the *Crab Orchard Site 36 Superfund Site* and *United States v. Schlumberger Technology Corp. et al*, 3:11-cv-00399 (S.D. Ill.)

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date:

6/4/2013

for


RICHARD C. KARL

Director, Superfund Division Region 5
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Date:

6-5-13

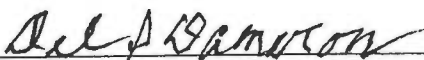

MARY L. FULGHUM

Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd. (C-14J)
Chicago, IL 60604

Signature Page for Consent Decree Regarding the *Crab Orchard Site 36 Superfund Site* and *United States v. Schlumberger Technology Corp. et al*, 3:11-cv-00399 (S.D. Ill.)

FOR GENERAL DYNAMICS – ORDNANCE AND
TACTICAL SYSTEMS

5/21/13
Date


Del Dameron, VP and General Counsel
11399 16th Court North, Suite 200
St. Petersburg, FL 33716
727-5788116
Del.Dameron@gd-ots.com


Agent Authorized to Accept Service on Behalf of Above-signed Party:

Del Dameron, VP and General Counsel
11399 16th Court North, Suite 200
St. Petersburg, FL 33716
727-5788116
Del.Dameron@gd-ots.com

Signature Page for Consent Decree Regarding the *Crab Orchard Site 36 Superfund Site* and *United States v. Schlumberger Technology Corp. et al*, 3:11-cv-00399 (S.D. Ill.)

FOR SCHLUMBERGER TECHNOLOGY
CORPORATION.

6/6/13
Date


Daniel Yates
Schlumberger Technology Corporation General
Counsel – NAM
300 Schlumberger Drive
MD-23
Sugar Land, Texas 77478

Approved	
By:	
SL Legal	

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Schlumberger Technology Corporation
Environmental Remediation
5599 San Felipe
16th Floor
Houston, Texas 77056

Signature Page for Consent Decree Regarding the *Crab Orchard Site 36 Superfund Site* and
United States v. Schlumberger Technology Corp. et al, 3:11-cv-00399 (S.D. Ill.)

FOR CRANE CO.

5/17/13
Date



Augustus I. duPont
VP, General Counsel & Secretary
100 First Stamford Place
Stamford, CT 06902
adupont@craneco.com

Agent Authorized to Accept Service on Behalf of Above-signed Party:

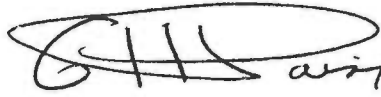
Augustus I. duPont
VP, General Counsel & Secretary
100 First Stamford Place
Stamford, CT 06902
(203)363-7300

Signature Page for Consent Decree Regarding the *Crab Orchard Site 36 Superfund Site*
and *United States v. Schlumberger Technology Corp. et al*, 3:11-cv-00399 (S.D. Ill.)

FOR OLIN CORPORATION

6/10/2013

Date



George H. Pain
Senior Vice President, General Counsel and Secretary
Olin Corporation
190 Carondelet Plaza
Suite 1530
Clayton, MO 63105
314-480-1404
ghpain@olin.com

Agent Authorized to Accept Service on Behalf of Above-signed Party:

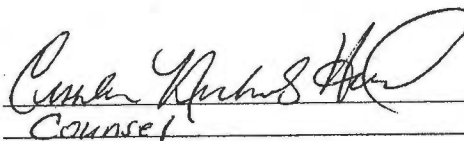
George H. Pain
Senior Vice President, General Counsel and Secretary
Olin Corporation
190 Carondelet Plaza
Suite 1530
Clayton, MO 63105
314-480-1404
ghpain@olin.com

Signature Page for Consent Decree Regarding the *Crab Orchard Site 36 Superfund Site* and
United States v. Schlumberger Technology Corp. et al, 3:11-cv-00399 (S.D. Ill.)

PENNZOIL-QUAKER STATE COMPANY

Date

June 19, 2013


Counsel

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Dan Kirk
Principal Program Manager,
Soil and Groundwater Focus Delivery Group, Major Projects
TSP 2155 B
777 Walker
Houston, TX 77002
Telephone: (713) 241-7140 or (832) 521-3539

Signature Page for Consent Decree Regarding the *Crab Orchard Site 36 Superfund Site* and
United States v. Schlumberger Technology Corp. et al, 3:11-cv-00399 (S.D. Ill.).

FOR ILLINOIS TOOL WORKS INC.

6/4/13
Date



Philip S. Dallosto
Deputy General Counsel
Illinois Tool Works Inc.
3600 West Lake Avenue
Glenview, IL 60026

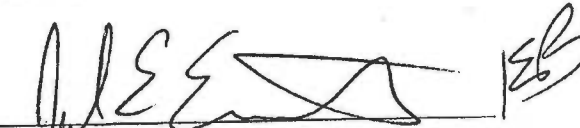
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Philip S. Dallosto
Deputy General Counsel
Illinois Tool Works Inc.
3600 West Lake Avenue
Glenview, IL 60026

Signature Page for Consent Decree Regarding the *Crab Orchard Site 36 Superfund Site* and
United States v. Schlumberger Technology Corp. et al, 3:11-cv-00399 (S.D. Ill.)

FOR MALLINCKRODT US LLC, BY ITS
SUCCESSOR IN INTEREST, MALLINCKRODT
US HOLDINGS LLC.

5/29/13
Date


John E. Einwalter
Vice President and Assistant Treasurer
675 McDonnell Blvd.
Hazelwood, MO 63042

Agent Authorized to Accept Service on Behalf of Above-signed Party:

General Counsel
Mallinckrodt LLC
675 McDonnell Blvd.
Hazelwood, MO 63042

Signature Page for Consent Decree Regarding the *Crab Orchard Site 36 Superfund Site* and
United States v. Schlumberger Technology Corp. et al, 3:11-cv-00399 (S.D. Ill.)

FOR GREAT LAKES SYNERGY
CORPORATION.

June 11, 2013
Date

Nancy Dehmlo
Nancy Dehmlo
Vice President/Secretary
Great Lakes Synergy Corp.
85 West Algonquin Road, Suite 600
Arlington Heights, IL 60005-3208


Agent Authorized to Accept Service on Behalf of Above-signed Party:

Nancy Dehmlo
Vice President/Secretary
Great Lakes Synergy Corp.
85 West Algonquin Road, Suite 600
Arlington Heights, IL 60005-3208

Signature Page for Consent Decree Regarding the *Crab Orchard Site 36 Superfund Site* and
United States v. Schlumberger Technology Corp. et al, 3:11-cv-00399 (S.D. Ill.)

FOR THE SHERWIN-WILLIAMS COMPANY:

6/3/13
Date


Catherine M. Kilbane
Senior Vice President, General Counsel and Secretary
The Sherwin-Williams Company
Midland Building
101 Prospect Avenue, NW
Cleveland, OH 44115-1075

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Allen J. Danzig
Associate General Counsel – Environmental
The Sherwin-Williams Company
Midland Building
101 Prospect Avenue, NW, Room 1100
Cleveland, OH 44115-1075

Appendix A

Consent Decree in United States v. Schlumberger Technology Corp. et al,
3:11-cv-00399 (S.D. Ill.)

